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WHAT IS THE MATTER WITH REPRESENTATIVE GOVERNMENT?

BY GEORGE H. SABINE

HARDLY more than a century ago, the hopes of liberals were centered in the creation of representative legislatures. Popular assemblies were established where none existed, and everywhere the assembly was made representative of a larger part of the population. In the end the suffrage was extended in many countries to approximately the whole adult population, of both sexes and of all degrees of wealth, education, and rank. And yet, with this process now practically complete, success has brought disillusionment rather than elation. In the United States we have the last step still fresh in mind, the enfranchisement of women. It is safe to say that the great majority even of those who favored it were rather listless; certainly few believe that it solves any serious political problem or that most legislation will be appreciably better because women have the vote. Broadening the basis of representation has ceased to seem a very important gain in the progress of government.

The fact is that as representative assemblies have become matters of course, we have very generally lost confidence in them as organs for making law. It is natural that in war-time, legislatures should decline in popular estimation, but I am not referring merely to that. The change was going on long before the War. Americans had long been accustomed to holding their legislatures in rather slight esteem, to thinking that the member of Congress or of the State legislature is not a very intelligent or a very important person. In fact, one would have to go a long way back in American politics to reach a time when election to Congress was an honor eagerly sought by men of ability and standing. The case of the State legislatures is much worse. If anything is written large across the histories of our States, it is popular distrust of the legislature. Our State constitutions, with their

detailed restrictions upon legislative power, are monuments to this distrust.

The freedom of our legislatures has been limited in two chief ways. It has been partly lost through the assumption of legislative functions directly by the people, but still more has it been hampered by the ascendancy of executive officers, who have had to assume more and more responsibility for getting laws framed and passed.

It was natural for Americans to assume that the democratic way to settle a question was to leave it to the people, and the more they distrusted their representatives, the more they tended to think that leaving it to the people meant letting the people vote on it. Since they did not trust the legislature to pass the laws they wanted, they invented ways of initiating legislation. And since they feared that the legislature would pass laws they did not want, they reserved to themselves the right to pass upon an enactment before it became law. More and more of our State law was written into the State constitution, which as a rule could be amended only by a referendum. Thus the initiative and the referendum were symptoms of the low opinion which Americans had of their State legislatures, but they were also causes of the further decay of those bodies, for the surest way to make a place unacceptable to an able man is to make it a place where little or nothing can be done.

In the case of the Federal Government, Congress lost power mainly to executive officers. Not that it tamely surrendered, or that its legal powers were restricted. Except in unusual circumstances, Congress has been tenacious of its Constitutional independence, and has rather enjoyed waging guerilla warfare against a President or Cabinet officer. But in the long run, circumstances have been too much for Congress. The power of the President, even over legislation, has steadily increased, and more and more Congress has had to accept his leadership. No theoretical independence could free Congress from the results of the President's superior strategic position. He could bring public opinion to bear upon them in a way they dared not neglect. For there can be no doubt that the public by preference sides with the President. It may grow tired at times of what orators

call "one-man government," but when some action is definitely wanted, the public rather likes to see the President put it through. It is in fact a definite gain in popular government to be able to hold some one person responsible for legislation, as for other results. The President, paradoxically enough, has become the people's agent for keeping the people's representatives up to their job. Our most successful Governors in the last twenty years have been men who could deal with State legislatures in the same fashion.

The public esteem in which the legislature is held has thus tended to decline in comparison with that given to other parts of the Government. Indeed, it is not too much to say that our legislatures have come to be distrusted, and that a very large number of persons feel that our so-called representative bodies are the part of the Government which least represent them in those matters which they deem of the greatest importance. It should be noted, however, that distrust of legislatures has not meant distrust of legislation. Particular acts may be condemned, but so far as methods are concerned, we look to legislation for the remedy of abuses almost as much as ever we did. In fact, this faith is inevitable. Social and economic relations in an industrial society have refused to become stable and social processes have undergone a steady and amazing acceleration. Such changes call for corresponding changes in the legal relations of the parties interested. Hence the law has had to change much faster in the last fifty years than ever before in human history. And some sort of legislative machinery has to labor at this task. Hence the appalling volume of law that our national, State, and municipal legislatures have poured upon the world. One may believe in particular cases that much of this law was ill-made, but he cannot escape the fact that one way or another most of it had to be made. There is no reason to suppose that the next fifty years will see any diminution of the need for revising the law.

The two outstanding features of the present situation are the need of legislating and our loss of confidence in the agencies by which legislating is done. Since there is no possibility of doing away with the need for legislation, the only question is the

possibility of more satisfactory agencies. In particular we need to get at the seat of our distrust of elected representatives. Representation, doubtless, we must have, since direct legislation is out of the question both by reason of the size of modern States and equally by reason of the complexity of the questions involved. Along what lines may we expect our law-making institutions to move under the stress of the present discontent? But first, can we explain more clearly *why* representatives have lost touch with their constituencies and lost the confidence of those who elect them?

The general notion of representation is of course very old. For English-speaking people especially it was not at all an invention of the age of democratization. There was one element, however, in the early notion of representation which has been almost wholly lost in the course of modern political evolution. In earlier times it was a *community* which was represented. The representative was the spokesman for a unified group which might not unreasonably be expected to express itself with one voice. It was a unit in fact, in the sense that the interests of the members really were for the most part confined to the local group, and it was a unit also in the minds of the members. The community was relatively small. It was economically self-sufficing to a very large extent, and there was relatively little communication with other communities. In consequence, the interests of every person in it were almost exclusively local and were very largely bound up with the welfare of the locality. Its social and economic organization was exceedingly simple, compared with modern communities. There really were group interests and these interests really could be represented.

Moreover, the members were definitely conscious of the community as a real being. If we were to borrow a modern idea, we should say that the units of representation were corporations. The local bodies acted in all respects as if they were persons. A county was in no sense merely the indefinite number of persons who happened to live in a given area. In fact, though the word county (*comitatus*) does refer to a geographical district, it means equally the county court, or local representative body, which chooses members to sit in Parliament. The county has duties,

rights, guilt, judgment, will, and organs for performing or expressing these. The looseness of the individual from the locality in which he lives, which is natural to our way of thinking, is essentially a modern idea. The correlated notion of the locality as merely a square mile of land inhabited by some indefinite number of persons is equally modern. In the past the local group was a community. Sometimes it was a guild with a definite unity of economic interest, but in any case the members were united by ties which seemed to them entirely tangible and the group thus formed was in their eyes a permanent, living, acting entity. Representation always involved the idea of such a unified group which spoke through its sworn mouthpiece.

The evolution of modern social and economic conditions, and the accompanying growth of modern government, have conspired, one might almost say, to crush the life out of the smaller units and localities which were once its living elements. It was inevitable under the circumstances that government should become more and more highly centralized, and that localities should be subjected more and more to centralized control. In the nature of the case the small local group could not preserve its individuality and self-sufficiency. More and more politics became a relation between two sharply contrasted extremes. On the one hand is the very powerful national state which knows no limit to its legal competence, which claims the power,—and sometimes exercises it,—of regulating all phases of the citizen's life, from his religion to his industry and from his education to his hygiene. On the other hand there is the citizen himself whose local attachments and communal bonds often have singularly little to do with his political activities and relationships. No doubt he still belongs to a community of some sort, but the community has largely ceased to be local and is not at all a political entity; on the other hand, the local political districts in which he votes have never become communities in any real sense of the word.

Thus we come to our present notion of representation, which is purely geographical and numerical. The constituency has become merely the indefinite number of heterogeneous individuals who happen to live inside an arbitrary line. If a State has sixteen

members in Congress, a Congressional district is merely an area containing one-sixteenth of the population of the State. By no stretch of the imagination can the Congressional district be called a community: it need have no common interests; its people are held together by no conscious social bonds; and they may in fact be heterogeneous to any extent. The other units of local government are no different. Our cities are divided mechanically into wards; our States are divided mechanically into counties; and the States themselves, if they ever had any real unity, have ceased to have it. By this I mean that there is little or nothing in the social and economic relations between the people that correspond to the legal and political distinctions imposed upon them by the existence of the State.

Thus it is true almost universally that the local units of government have little real significance; the local governments do not stand for functionally active communities conforming to the interests and sentiments of the people. When we have wished to make really effective administrative units, such for example as the districts of the Federal Reserve Bank, we have had to neglect the legal frontiers between our local governing units. Is not this the fundamental reason why the claim to State's rights and local self-government, which has been acclaimed persistently as an ideal in American politics, has had so little practical effect? But more especially is it not at the root of our difficulty with representation? How can one man represent that which has no unity and stands for no definite purpose? Is it not easy to see why men feel that a representative who is shared among a heterogeneous mass is no representative at all? In the nature of the case he cannot stand for that which vitally interests anyone, for if he does, he becomes antagonistic to someone else who has an equal claim upon him. Thus he is smoothed down to the level of the man who is everybody's friend,—the very symbol of futility. In a word, our political representation has lost touch with the social and economic relations which make up most of the life of the community.

The fact is that while political representation has adhered rigidly to the locality in the mere geographical sense, the general tendency of social and political development has been to make

human communities independent of locality to a degree that would have been utterly inconceivable a century ago. Stripped of their traditional associations in the local community, men have set themselves to the making of new ties and new associations which are for the most part not local. Wide and easy communication make it practically certain that human associations will never again depend so much upon locality as they have in the past. What is essential to an association is not that the members should be in the same place, but that they should be convinced of a common interest in uniting, a common purpose to be attained, a common cause to be served. If this interest is a permanent one and if it is one which can obtain the adherence of large numbers of men, great and enduring associations can result which awaken a high degree of loyalty in their members. There is one such association which has played a great part in human life and which is by no means modern, viz., the Church, but the last generation has seen an amazing proliferation of associations of this sort. We have, for example, all the manifold associations with an economic basis,—the chambers of commerce, the employers' associations, the federations of labor, the coöperative consumers' leagues, the farmers' marketing and purchasing associations. It is extraordinary how easily and rapidly men ally themselves in these ways when the conditions are right to make them aware of a community of interest. Moreover, by no means are all these modern associations economic in origin. The lawyers' bar associations, the physicians' medical associations, and the engineering associations appeal in part no doubt to an economic motive, but certainly to many other motives besides. The many associations of scholars are for the most part not economic at all. In general, any permanent basis of common interest that can be furthered by coöperation offers the ground for an association of this sort.

The great number of these non-local associations that are based on common interests, and the rapidity with which they grow in size and power, make a striking phenomenon of present-day society. They have increased as the local community has declined, and for the same reason: under modern conditions it is simply impossible that interests should be confined within the

bounds of local groups. Modern men in increasing numbers are but loosely attached to local groups and on the other hand have more and more interests in common with other men who are widely scattered. The interests which unite them with other persons of the same occupation outside their locality may easily be more vital than those which unite them with their neighbors, and the associations which result may command a correspondingly larger share of their attention and loyalty. In short, they feel that this association, or its agents, is a more adequate representative of their real interests than the political representative whom they must share with all sorts and conditions of men because of the merely external identity of residence.

Though non-local associations based upon common interests have become a serious social phenomenon, it should be noted that they have not as yet attained the standing of a political phenomenon, at least in the United States. By this I mean that they are wholly outside the law, though of course not contrary to it. They are private associations and nothing more. Government does not recognize them or make any use of them, except under unusual circumstances. Indeed, it has sometimes tried to hinder them, especially in the case of labor organizations, though with no great success when many persons were convinced of their utility. I do not say that they have played no part in government. They have, for in many cases an important part of their purpose is to influence legislation. They try to supply indirectly the representation which their members do not feel that they get from their political representatives, but such activity is extra-legal; it is no part of the organized agencies by which our laws are made.

This extra-legal influence upon law-making, though it doubtless always existed in some degree, has grown to be one of the paradoxes of representative government. We solemnly elect our representatives and send them to the State or National capital to make our laws. But when we want something, or believe that something needs doing, we show little confidence that our representative will know about it or give his help if he knows. We forthwith begin to devise ways of convincing him that we want it and of putting pressure upon him to help us get it. What we

actually rely on is the extra-legal, voluntary association which we feel can really be trusted to look after our interests. The merchant or manufacturer looks to his chamber of commerce or his employers' association to secure the legislation he needs or to prevent the legislation he fears. Even the citizen who wants nothing more from the legislature than an adequate provision for the public schools, finds that he must work through associations organized to bring political pressure to bear upon State officials. We are in the position of the man who kept a dog but had to do his own barking.

Thus every legislative assembly is attended by a great pulling and hauling of interests, but this in itself is not what makes the paradox. The purpose of law is to harmonize and adjust conflicting interests in behalf of the whole community. It is right and proper, therefore, that all interests should be represented and heard. The paradox lies in the fact that the real representatives are not the responsible legislators, that the most decisive part of the session is likely to take place in the lobby, and that the duly elected "representative" constantly tends to become a puppet whose strings are pulled by someone in the background. And the public generally expects that results will be got by pressure or persuasion, by methods which it vaguely hopes will be legitimate but which it knows often are not so. Thus our laws are passed under conditions which are merely another chapter in the old story of bad government: power without responsibility and responsibility without power. The real representative who commands the support of an organized and interested part of the voters is a private person who need only keep on the right side of the corrupt practices act, while the man who is elected ostensibly to make law is politically responsible to an unorganized constituency which has no unified purpose to be represented. Is it strange that men with real ability and serious purposes should be loath to undertake such a job?

In the meantime, organization for the coöperative furthering of common interests grows steadily and rapidly. It is idle to blind ourselves to the fact that there are great possibilities of danger in this. A powerful association to promote a particular interest becomes a public menace when it uses its power in an

irresponsible or purely selfish manner. But of course it is equally idle to suppose that we can influence such associations by treating them as if they were somehow abnormal. The danger lies not so much in the fact that they are powerful, as in the fact that they are irresponsible. Both labor unions and employers' associations as we know them have been organized mainly to wage war on their enemies and to win advantages for the interests they represent, whatever other interests may suffer in the process. So long as they remain of this sort they are seeds of disorder; it is just this which no statesmanlike solution of the problem can tolerate. Conflict of interests we shall always have and these conflicts will call for continual readjustment. But the adjustment must itself be an obligation upon the organizations which exist to maintain the interests. They must be made responsible for the adjustment of conflicts and for a due regard to other interests.

When an organization reaches a certain degree of power, it is really a pretense to go on treating it as if it were merely a private and more or less casual association. Already there exist associations both of labor and of capital able to exercise a power of life or death over the industries upon which the community has to live. Though nominally voluntary, they exert a control over their members which is sometimes more binding than law itself. In fact, they have at their command much of the psychological apparatus that goes to the making of law. In a word, they are institutions, or at least they are clearly on the road to becoming institutions, though they lack recognition. In one way or another, government must take account of these vast organizations; it must utilize them as responsible agencies in the public control over the vital organs of the community.

The problem of representative government is to get back to a representation of vital interests by responsible representatives. It is not my purpose to discuss the plans by which it has been proposed to bring this about. Proportional representation would at least permit men to group themselves as their interests might dictate. The representation of industrial interests permitted by the new German Constitution is a recognition of the problem, if not a solution. Perhaps in the end we shall be driven to the

much more radical expedient of organizing our basic industries as self-governing units having more or less of legal competence and subject more or less to some kind of outside regulation. Such plans for the future contain necessarily a large element of speculation. But it is not speculation to say that representative government as it now exists is far from being an unequivocal success or that it has grievously disappointed the hopes which liberals built upon it. It is not speculation to hazard the forecast that representation will never again be made effective upon a merely local or geographical basis. The modern community has outgrown the limits of locality, which, from the beginning of man's experience down to the end of the eighteenth century, were natural to all communities. When essential human interests and the associations built upon them have ceased to be local, it is idle to suppose that locality can continue to serve as a sufficient basis for political representation. We cannot go on forever with a twentieth century society and an eighteenth century system of government.

GEORGE H. SABINE.